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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. JUAN MENDOZA, Defendant and Appellant.	E048399 (Super.Ct.No. RIF116877) OPINION

APPEAL from the Superior Court of Riverside County. James T. Warren, Judge. (Retired judge of the Riverside Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Richard Power, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Pamela Ratner Sobeck and Daniel Rogers, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Juan Mendoza appeals following the denial of his motion to withdraw his guilty plea. This is his second appeal. Defendant pled guilty to committing an attempted battery by gassing on a police officer (Pen. Code, §§ 664, 4501.1, subd. (a))[1] (count 1) and two counts of committing a battery on a noninmate (§ 4501.5) (counts 2 and 3). Defendant also admitted that he had sustained three prior strike convictions (§§ 667, subds. (c), (e)(2)(A), 1170.12, subd. (c)(2)) and two prior prison terms (§ 667.5, subd. (b)). Defendant was sentenced to a total term of 27 years to life in state prison. (*People v. Mendoza* (Dec. 12, 2008, E045428) [nonpub. opn.].) Defendant appealed, and this court affirmed his convictions; however, we ordered the abstract of judgment amended to reflect imposition of a one-year term for each of the two prior prison term enhancements, instead of the two 2-year terms indicated in the abstract of judgment. (*Ibid*.)

On remand, the trial court vacated the two 2-year terms, imposed a term of one year for each of the prior prison term enhancements, and resentenced defendant to 27 years to life in state prison. Defendant thereafter moved to withdraw his guilty plea, which was heard and denied. The trial court then vacated defendant's sentence on the two prior prison term enhancements, reimposed them, and then stayed them, for a total term of 25 years to life in state prison.[2]

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[1] All future statutory references are to the Penal Code unless otherwise stated.

[2] This conformed to the court's original promise to defendant that it would not sentence defendant to more than 25 years to life in state prison if he pled guilty.

In this second appeal, defendant contends the trial court erred in denying his motion to withdraw his guilty plea. We reject this contention and affirm the judgment.

II

DISCUSSION[3]

On January 28, 2008, defendant initialed and signed a felony plea form, pleading to the sheet with "no deals" promised. Defendant was informed that the maximum possible custody commitment would be 25 years to life. Defendant's initials acknowledged that he was advised of his constitutional rights and the consequences of his plea. Defendant also indicated that he had adequate time to discuss with his attorney his constitutional rights, the consequences of his plea, and any defenses he had against the charge. At the guilty plea hearing, the court inquired whether defendant understood the plea, signed the plea form, reviewed the plea form with his attorney, understood his constitutional rights, and understood that he was voluntarily giving up those rights. Defendant answered in the affirmative. Therefore, the court found that defendant willingly, voluntarily, and knowingly entered his guilty plea.

In regard to the possible sentence defendant could receive, the court, in great lengths, explained to defendant the following: ". . . I would have the ability on the three counts I could sentence those all consecutively so it would be a 75 year to life potential term. I will indicate to you that I would not sentence you—at the very worst case

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[3] The details of defendant's criminal conduct are not relevant to the limited issue raised in this appeal. Instead, we will recount only those facts that are pertinent to the issue we must resolve in this appeal.

scenario—to no more than 25 to life. I'm not saying I would do . . . that, but that would be the worst case scenario if it all went badly for you. What's going to happen now at this point is that the matter will be referred to the Probation Department. We'll get what information they have. We'll set this for a sentencing proceeding, and I'll hear from your attorney regarding a motion to strike those prior strikes if he wishes to file that. There can be any kind of argument regarding the disposition in this case. So the worst case scenario would be 75 to life.

"I could also go all the way to the other end of the extreme and strike all the strikes and grant you probation and give you some time in the county jail. And there's lots of options in between, and all of that is on the table. I am not making any disposition. I could tell you right now I don't have a clue as to what I'm going to do at the end of this case, but I will assure you I'll give you fair consideration. I'll take into account your entering a plea of guilty rather than going to trial. That would be a factor in your favor, and I will certainly consider that. But I'm making no promises or representations as to how this will come out. We'll take it from there. Essentially, you are in the same position as if you went to trial and were convicted of everything except that you wouldn't have the benefit of a guilty plea instead of a jury verdict. So you have improved your situation in that regard but, again, I would emphasize no promise or deals." The court then asked defendant whether "we understand each other?" Defendant replied in the affirmative.

On March 20, 2009, defendant filed a motion to withdraw his guilty plea, claiming his trial counsel advised him his sentence would be four years rather than the 25-year-to-

life sentence ultimately imposed. In support, defendant merely declared that he was "entitled to withdraw the plea because the court intends to impose the following sentence, which differs significantly from that to which I agreed." The People filed an opposition on March 26, 2009.

The hearing on defendant's motion to withdraw his guilty plea was heard on April 29, 2009. The trial court indicated that it had read and considered defendant's motion, the opposition, and the transcript of the proceedings on January 28, 2008, when defendant entered his plea. Following argument from defense counsel, the trial court denied the motion.

Defendant contends the trial court erred in denying his motion to withdraw his guilty plea on the ground that his trial counsel informed him that he would face a maximum sentence of four years in state prison if he pled guilty and not the 25 years to life he actually received. In the alternative, he asserts that his counsel was ineffective in failing to inform him of the possible and likely consequences in pleading guilty. We disagree.

Under section 1018, the trial court may, on a showing of good cause, allow a defendant to withdraw a plea of guilty. The defendant has the burden of establishing good cause by clear and convincing evidence. (*People v. Wharton* (1991) 53 Cal.3d 522, 585.) "'Good cause'" means mistake, ignorance, fraud, duress, or another factor that overcomes the exercise of free will. (*People v. Ravaux* (2006) 142 Cal.App.4th 914, 917.) The trial court then considers all factors necessary to obtain a just result, including the rights of the defendant. (*People v. Superior Court* (*Giron*) (1974) 11 Cal.3d 793,

798.) The trial court must examine whether the defendant understood the nature of the charges, the elements of the offense, the pleas, and the defenses at the time of his plea. (*People v. Hunt* (1985) 174 Cal.App.3d 95, 103.)

"A decision to deny a motion to withdraw a guilty plea "'rests in the sound discretion of the trial court"' and is final unless the defendant can show a clear abuse of that discretion." (*People v. Fairbank* (1997) 16 Cal.4th 1223, 1254.) The trial court has broad discretion when considering a motion to withdraw a guilty plea, and the facts found by the trial court must be adopted by the reviewing court if they are supported by substantial evidence. (*People v. Suon* (1999) 76 Cal.App.4th 1, 4.) Therefore, the trial court's denial must be "arbitrary or capricious or ""'exceed[] the bounds of reason . . .""" to be disturbed on appeal. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121.)

In this case, we cannot say that the trial court abused its discretion in denying defendant's motion. There is no evidence in the record to indicate that defendant's trial counsel led him to believe that his plea would result in a four-year sentence and not the 25 years to life actually imposed. In fact, there is overwhelming evidence to the contrary. The plea form indicated the maximum possible custody commitment would be 25 years to life. Defendant's initials on the plea form acknowledged that he was advised of his constitutional rights and the consequences of his plea. Defendant also indicated that he had adequate time to discuss with his attorney his constitutional rights, the consequences of his plea, and any defenses he had against the charge. At the guilty plea hearing, the trial court repeatedly explained the plea to defendant and the possible sentence defendant could receive. The trial court informed defendant that there were "no . . . deals," that

nothing had been promised to him, and that he could receive a sentence between probation and 25 years to life. Defendant answered in the affirmative to the court's inquiry of whether defendant understood the plea, signed the plea form, reviewed the plea form with his attorney, understood his constitutional rights, and understood that he was voluntarily giving up those rights. Defendant also indicated that he understood the possible sentence he could receive. Therefore, the court found that defendant willingly, voluntarily, and knowingly entered his guilty plea.

There patently was no abuse of discretion here. The trial court evidently did not believe defendant's claim that his trial counsel led him to believe he would receive a four-year sentence if he pled guilty, and the record provides no basis whatsoever for differing with this evaluation of credibility. Determinations of credibility and the truth or falsity of the facts on which the determinations depend are trial court functions. (*People v. Jones* (1990) 51 Cal.3d 294, 314.)

Defendant also argues his motion to withdraw his plea should have been granted because he received ineffective assistance of counsel by being informed he would receive a four-year sentence.

In *People v. Wash* (1993) 6 Cal.4th 215, 269, our Supreme Court restated the long standing test for ineffective assistance of counsel. "The standard for evaluating claims of ineffective assistance is well settled. To establish entitlement to relief, defendant must show: (1) trial counsel failed to act in a manner to be expected of reasonably competent attorneys acting as diligent advocates; and (2) it is reasonably probable that a more favorable determination would have resulted in the absence of counsel's failings.

[Citations.]" (See also *Strickland v. Washington* (1984) 466 U.S. 668, 688 [104 S.Ct. 2052, 80 L.Ed.2d 674].) When the defendant has entered a guilty plea, he must show that there was a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. (*Hill v. Lockhart* (1985) 474 U.S. 52, 59 [106 S.Ct. 366, 88 L.Ed.2d 203]; *In re Alvernaz* (1992) 2 Cal.4th 924, 934.)

Defendant has failed to show his counsel failed to act in a manner expected of other reasonably competent attorneys. He did not provide any corroborating evidence to support his position. (See, e.g., *People v. Goldman* (1966) 245 Cal.App.2d 376, 381, disapproved on other grounds in *In re Smiley* (1967) 66 Cal.2d 606, 626-627.) In fact, there is no evidence to suggest that trial counsel led defendant to believe he would receive a four-year sentence if he pled guilty. Defendant's conclusory statement to that effect in his motion to withdraw his guilty plea is not evidence, contrary to defendant's contention. Defendant's declaration in support of his motion makes no mention of any discussions with his trial counsel regarding his potential sentence. The declaration merely alleges that the sentence "differs significantly from that to which I agreed."

"A defendant must understand the nature of the charges, elements of offenses, pleas and defenses which may be available and punishment which may be expected before a trial judge accepts his waiver and plea. [Citation.] However, in determining the facts, the trial court is not bound by uncontradicted statements of the defendant. [Citation.]" (*People v. Hunt* (1985) 174 Cal.App.3d 95, 103.) In addition, the decision to plead guilty is ultimately made by the defendant, not by his attorney. (See *In re Alvernaz*, *supra*, 2 Cal.4th at p. 933.) Here, the trial court determined that defendant

understood the charges to which he was pleading and the minimum and maximum sentences.

"Often the decision to plead guilty is heavily influenced by the defendant's appraisal of the prosecution's case against him and by the apparent likelihood of securing leniency should a guilty plea be offered and accepted. Considerations like these frequently present imponderable questions for which there are no certain answers; judgments may be made that in the light of later events seem improvident, although they were perfectly sensible at the time. The rule that a plea must be intelligently made to be valid does not require that a plea be vulnerable to later attack if the defendant did not correctly assess every relevant factor entering into his decision." (*Brady v. United States* (1970) 397 U.S. 742, 756-757 [90 S.Ct. 1463, 25 L.Ed.2d 747].)

Defendant has not shown good cause to allow withdrawal of his guilty plea. While section 1018 is to be liberally construed, and a plea of guilty may be withdrawn for mistake, ignorance, inadvertence, or any other factor overreaching defendant's free and clear judgment, defendant has not established by clear and convincing evidence the facts upon which such ground for withdrawal exist. (*People v. Shaw* (1998) 64 Cal.App.4th 492, 496.) "The burden is on the defendant to present clear and convincing evidence the ends of justice would be subserved by permitting a change of plea to not guilty. [Citation.]" (*Ibid.*)

Indeed, courts have rejected as good cause such claims as psychological pressure from counsel, including bad tactical advice (*People v. Urfer* (1979) 94 Cal.App.3d 887, 892); unforeseen changes in circumstances that make the plea bargain less attractive to

the defendant (*People v. Powers* (1984) 151 Cal.App.3d 905, 917); mistaken expectations of a lenient sentence, even if a result of good faith, but wrong, advice from counsel (*People v. Fratianno* (1970) 6 Cal.App.3d 211, 221-222, and cases cited therein) or even if the result of a good faith reliance upon nonbinding, nonmisleading remarks of the court or prosecutor (*People v. Spears* (1984) 153 Cal.App.3d 79, 87-88; *People v. Vento* (1989) 208 Cal.App.3d 876, 879-880); and a mistaken belief in the strength of the People's case (*People v. Watts* (1977) 67 Cal.App.3d 173, 181-183).

The record before us affirmatively shows defendant was fully and completely advised of his constitutional rights and of the consequences of his plea, that he understood those rights and consequences, and that he willingly, voluntarily, and knowingly waived those rights and entered his plea with a full and clear appreciation of the consequences. "A plea may not be withdrawn simply because the defendant has changed his mind." (*People v. Nance* (1991) 1 Cal.App.4th 1453, 1456 [Fourth Dist., Div. Two].) We find that the trial court's ruling did not exceed "the bounds of reason, all of the circumstances being considered." (*People v. Giminez* (1975) 14 Cal.3d 68, 72.) There was no abuse of discretion.

II

DISPOSITION

The judgment is affirmed.

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RICHLI
J.

We concur:

McKINSTER
Acting P. J.

KING
J.